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MAP III. RUNOWE

1: Wilson E-5 (1934-1938) 1951 FN17 Ngondo FN17
Nyakyusa



[Facing p. 16 (b)]

627 some pasturage and the fire destroyed two plots of millet. I gave
the owner an iron hoe.*

627 The ideal is settlement by agreement; in practice (at the present
time) a large number of cases go (like this one) to the chief, and
then on to the Native Court. Thence there are many appeals to the
Native Appeal Court, the District and Provincial Officers' Court
and even to the High Court of Tanganyika. As we have indicated
it is likely that fewer cases are settled by arbitration than formerly;
but before the coming of the Europeans, chiefs' courts with
power to enforce judgement existed, and were used. There was
no 'golden age' in which all cases were settled by agreement.

627 The decision of arbitrators is essentially the judgement of
248 public opinion in the village, or the respective villages, of the
disputants. Cases are heard in public, neighbours drop in to
join in the discussion, and a decision cannot be given contrary
to their expressed opinions.

A. Witnesses to contracts

615 Not only do fellow villagers play a part in settling disputes
they also act as official witnesses in various types of legal transac-
tion. The village headman is an essential witness at an adoption
(*vide supra*, p. 116) and at the distribution of the estate of one of
his men. Whenever marriage-cattle are handed over, two or more
non-relatives are called upon to serve as witnesses,¹ and these
chosen are commonly village neighbours of either the groom or
his father-in-law. We heard one man censured by his friends
because he had neglected to take a village neighbour with him as a
witness when he went to consummate his son-in-law to his daughter's
puberty ritual. He had visited his son-in-law's 'best man' (*om-
furya*) as was correct, but had omitted to take a friend with him
to witness the consummation that took place. Even in matters that
are kept very secret at least one official witness may be neces-
sary. For example, an old man occasionally gives his heir per-
mission to sleep with his wives while he is yet alive, and he does so
in the presence of a neighbour or senior relative, for though the
affair is very private it is absolutely necessary to have a witness
to prove that the right was granted.

* cf. Geoffrey Wilson, 'An Introduction to Nyakusa Law', *Africa*, Vol. 1
(1937).

Law & Crime

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671 law-breaking, and the balance was restored when the law was vindicated. The idea that stable equilibrium means stagnation is alien to the Konde mind. To disturb the balance in order to advance to new conditions is a European, not a Bantu idea, and wherever the European stimulus has been removed, the wheels of custom drag heavily again.

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695 A native court is not, to a white man, an imposing spectacle; though no doubt it is fearsome enough to some trembling rascal, who has little reason to hope that his misdeeds will escape their due reward. The court meets under the village tree, or, if the weather is bad, on the verandah of the chief or judge. There the chief sits with his headmen if the case is an important one, and there are usually a few old men present also, in whose memories are stored up records of previous cases which may have some bearing on the one in hand. The persons concerned are among the audience, which sits facing the court; and when called upon, they rise in turn, and conduct the case from where they stand. The native is a born disputer. I have known a clever man fight his case with amazing skill and perseverance; even after it was clear that the evidence against him was complete, he would go on adducing fact after fact with a dialectical skill that would not disgrace a European lawyer at cross-examination. If the judge is a man with a sense of humour, he often announces his decision by relating some well-known story, the point of which is taken by all, or, with expressions of approval or otherwise, they rise and go. Execution of sentence

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- 692 does not delay, but is carried out immediately. The
695 loser may, however, appeal to another judge for a re-
hearing of the case. Compensation in some form,
usually cattle, or loes, or, in a few cases, a daughter,
is the sentence.

674 *Theft*.—The extraordinary boldness and skill of
the Nyakyusa thieves are widely known. Outside their
own country their reputation is perhaps greater than
they deserve, great though that is. At one place
guards are doubled when it is known that Nyakyusa
carriers have arrived. No European house has
escaped their attentions, to the greater or smaller loss
of the owner. They break through brick walls, enter
by door or window, conduct their operations by day
or night, with equal indifference and success; and the
speed with which recognizable goods are disposed of,
adds to the mystery of their methods.

A white man was recently robbed while reading in
bed with dogs beside him, the thieves quietly lifting
and carrying off a heavy trunk, which they believed
to contain a large amount of cash, before the owner
knew that they were in the room. Another had the
whole of his kit taken while he himself was in the next
room; a medical man had his hand-bag taken from
his bedroom at about five in the afternoon; in yet
another case the sum of two hundred shillings was
quietly carried off from a table while three Europeans
were sitting in the next room at breakfast. Shirts
have been taken off beds, and the owners knew
nothing of their loss until bed-time revealed the fact.
Rifles and accoutrements have been removed from

NORTH NYASA REGION

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622 secular affairs of his own age-village and full supremacy in religious matters over all. Appeals in difficult cases might be taken from either of the young chiefs to the old chief and his great commoners. After his death, the wives and cows of the old chief were inherited by his full-brother, to whom also his religious authority passed. Full political power over their separate chiefdoms then went to the two sons. The great commoners of the old chief, relinquishing their secular functions to their successors, then centered on their religious duties as priests of the dead chief; this priesthood they handed on to their sons. When all the old chief's full-brothers were dead, the religious functions of chiefship passed to the young chiefs, who were then fully emancipated. The boundaries between their chiefdoms, settled at the 'coming out' ceremony, were sometimes modified by warfare.¹ The age-village is still the chief field of friendship, members recognizing greater obligations to each other than to outsiders; before the European administration the village was also a military unit.²

624 The great commoners of every village were very powerful, and measures existed to check his influence; for instance, no kinsman of a chief or son of a great commoner could be elected to that office. His duties were to be hospitable to the villagers, judge their cases, lead them in war, and officiate at their ceremonies. He represented their wishes to the chief, and through him and in consultation with him the chief gave his orders. Each great commoner was believed to be able to protect his own villagers from witchcraft.

WARfare

724 A state of war—actual or potential—always existed among the various Nyakyusa chiefdoms. Among the Ngonde, also, civil war was endemic, the Kyungu neither preventing it nor taking any part. In tribal warfare he did not remain impartial, but gave orders and told the chiefs to prey. They first called on the sacred groves of the buried Kyungus, and then each great chief called on his own predecessors for help. Although the territorial nobles also fought, they did not prey to their ancestors, for tribal war was carried on under royal auspices alone. War was an important source of revenue in cattle and slaves. The recurrent civil wars of the period before the Ngoni invasion show that in spite of the hierarchical façade the centralized political organization was not strong enough to overcome the local autonomy of the chiefdoms, except in the face of a common danger, such as the threat of Banda or Ngoni invasion.³

Justice under the Traditional Systems of the Ngonde

632 There was no central court of appeal or Mbande to which the ordinary man could bring cases down, or appeal against the decisions of his local chiefs. At the capital the only cases dealt with by the nobles of Ngonde were cases of treason against the Kyungu (usually adulterous approach to his wives), which were summarily punished by death. They also used the Kyungu's authority in punitive expeditions against insubordinate chiefs. Each noble of Ngonde decided the cases in his own field. Each great chief held an appeal court to which cases from all the chiefdoms of his house came, for of all the descendants of the Kyungu the great chiefs alone had power to administer the poison ordeal. Some of the territorial nobles also had the power. It was resorted to not only in witchcraft cases, but in appeal cases when evidence for a legal decision was lacking.

¹ Wilson, *op. cit.*, pp. 278-80.² *Ibid.*, p. 278.³ *Ibid.*, p. 102a, pp. 32-43.

PEOPLES OF THE LAKE NYASA REGION

642 Many cases were of course decided by the common people among themselves, others by their great commoners, and others by the local chiefs sitting with their great commoners. Although there was no concerted judicial system, the political hierarchy of chiefdoms sometimes could be used to obtain redress in the case of a quarrel between men of different chiefdoms. The weakness of the system is indicated by the fact that restitution for wrong done was often obtained by the method of capturing a hostage.¹

681 Witchcraft was punished by death. An adulterer, if caught, was killed by the husband. Deliberate murder required compensation up to ten head of cattle and the transfer of a woman, followed by a feast of reconciliation. If the murderer could not be caught a blood feud would be started, ending with a feast of formal reconciliation under the guidance of a diviner. Accidental homicide required compensation, but no feast of reconciliation, so there had been no murder. A cattle thief caught red-handed might be killed on the spot; arson was settled by payment of compensation.²

MODERN GOVERNMENT

622 (a) Ngande. The British Government in Nyasaland at first applied the system of
642 direct rule. Chiefs and nobles were recognized as 'village' or 'principal' headmen,
643 performing executive duties for the Administration. The Kyungu was one of the 'principal' headmen, but was not recognized as Paramount. In 1924 the system was modified by the setting up of advisory councils in association with the headmen and the District Resident. The members of the councils were nominated and removable by the Government, and there was no intention of reviving tribal government.

In 1923 the system of Indirect Rule was introduced. The Kyungu was recognized as paramount chief, with an appeal court and five sub-chiefs under him. Of these, one, Kilapula, was over the northern part of the Ngande plain, another ruled the Landiya in the extreme north-west, and the three others were distant territorial nobles ruling groups of alien stock in the hills. The nobles of Ngande, with twelve prominent nobles and six other commoners, were recognized as members of the Kyungu's court and given nominal salaries. Three of the great chiefs of Ngande who were not made sub-chiefs were officially termed 'important' headmen, and given nominal salaries. The other chiefs and territorial nobles were still termed 'village' headmen as before 1923. The Kyungu and the five sub-chiefs were each given an area and a court for the area. Village and important headmen could arbitrate in small cases but had no power to execute judgments. That power belonged to the courts alone. The Kyungu's court was also a court of appeal for the whole of Ngande. A Native Treasury was established, into which one-twelfth of the tax was paid, but this was almost entirely expended on personal emoluments.

The full traditional constitution cannot be revived, as the religious beliefs which supported it have been superseded. Forty-five per cent. of the population profess Christianity, and even the belief in witchcraft, which operated in certain cases as a constitutional check, is less persistent than before. The native rulers are no longer believed to control the rain and the health and fertility of their people, as they used to fall by the performance of their sacred duties alone. Since the Kyungu has come out of religious confusion the nobles of Ngande are relegated to advisory status. The consolidation of the constitution tends in this respect to make it more autocratic, both

¹ Wilson, p. 1929, p. 28-30.² Haden, 1923, pp. 25-26.

the wealth derived from this trade enabled one of their chiefs, Krayaga, to maintain himself as paramount over all Ngunde. Among his people ⁶⁴⁸
important relationships thus had a greater importance. And it was, I ⁶⁴⁹
believe, the historical isolation of the Nyakyusa from any considerable
commercial contact with the outside world which prevented the rise
among them of a paramount chief.

To-day the Nyakyusa are in process of integration with the civilized ⁶⁵⁰
society of the world and the independence of their minute chiefdoms has ⁶⁵¹
inevitably passed away. The traditionally sovereign chiefs have been ⁶⁵²
grouped in seven court districts with one chief as President of the Native ⁶⁵³
Court in each; and these seven chiefs together with the two Presidents of
the Nkhosi and Lumbwa Courts are federated, with an Appeal Court and
joint Native Treasury of their own. In the seven Native Courts most of
the traditionally sovereign chiefs are entitled to sit with their great-
cousins, and assist the President and his great-cousins in the
hearing of cases. The bulk of the legal business previously transacted
by each chief in his own country is now taken to Court, but the power of
great-cousins to settle disputes by arbitration in their separate villages
is still the basis of the legal system.

A poll tax, now (1938) fixed at 5/- per annum for adult males with no ⁶⁵⁴
additional tax for plural wives, has been introduced and chiefs are paid ⁶⁵⁵
small salaries ranging from 5/-, 10/- or 20/- a month for ordinary chiefs to
50/- or 100/- a month for the Court Presidents.

The Nyakyusa, as we have previously mentioned, consist of a number ⁶⁵⁶
of immigrant groups who have spread among and incorporated an indige-
nous population. The main immigrant groups were those in number
and are distinguished to-day by the names of "Nyakyusa," "Kakwa"
and "Selya." As all these three groups together (including those who
are now incorporated in them) call themselves "Nyakyusa" to the outside
world, I distinguish the one group to which the name more particularly
belongs as the "Nyakyusa proper." The Nyakyusa proper live in the
plains of Margu and up on the higher ground as far north as Tolopeya,
the Kakwa live north of them around the base of Bangwe Mountain while
the Selya live in the east of the district, between the Nyakyusa proper
and the Kakwa, right under the wall of the Livingstone Mountains.
Between the three groups there are minor differences of dialect and custom.

The extent to which the indigenous groups retain any separate
identity varies in accordance with the number of the immigrants and the
date at which they reached them, but over a large part of the district
fusion has been complete.

We have already discussed the economic relations between the ⁶⁵⁷
Nyakyusa and the Lupa gold fields which provides them with a market

may call to against her husband, if she desires divorce. And, it is hinted, 42/
this particular form may sometimes be successfully invoked by a 626
plausible woman even without good cause.

In disposing of the surplus of their crops and business the respective 42/
rights of a married woman and her husband vary in detail, though little 513
in substance, according as he has or has not made a formal division
between them. It is not infrequent for a man to reserve for his own use
one or two plots and some business stores, which are then called *hanga*
plots or business (include or *hanga* for *hanga*). In the planting, weeding
and reaping of the *hanga* plots all the man's wives co-operate if he has
several, but the final produce is absolutely his own, it is stored by him and
they have no part in it. Conversely, however, the rights of each woman
to dispose of the surplus crop of the plots allotted to her are thereby greatly
increased, for her husband cannot then touch it at all.

In any case, whether or not *hanga* plots and business have been set
aside, a woman's obligation to provide food for her husband's own-

activity can possibly arise on one or the whole area or command general
approval and support for its action.

But in primitive society it is otherwise. In a small and isolated group
largely composed of personal acquaintances it is difficult to escape from one's
friends; while the form of every decision, of every branch of life, are more
widely known; and in consequence, it is then perfectly possible or even
for legal decisions to be effective without the intervention of any central
authority at all. The neighborhood, or the business, or the affairs of a
tribe are so themselves a large and important source of his activity, and
he can only with difficulty escape their authority; he can not live himself in
a great city or on his civilized community. And as the typical method of
legal procedure in a primitive society is for him to be taken against a spec-
tacular by them more easily concerned, supported by general public
approval. And it frequently happens that the only effective action is taken
unprompted by the injured party; nevertheless if that action is supported
and strengthened by any generally expressed approval we can not deny that
it possesses a legal force.

In a primitive group any request which an individual may make to his
business or neighborhood for practical assistance against a lawbreaker,
any appeal to their opinion in a dispute is a legal procedure, for it is an
appeal to authority. It is they upon whom he is in practice more dependent.
Now it is only in "primitive life" that he depends upon them, for,
owing to the isolation of the group, the distinction between "public" and
"private life" hardly exists. In many situations they hold in their hands
the whole force of his activity; their actions and opinions are decided or
supported by the informal but nevertheless effective law of widespread
public discussion; and if they are against him he has nowhere else to turn.

Now primitive society neither is so large isolated and primitive,
neither has it yet fully taken its place in the social system of the world; it
is in process of transition. Legal procedure is, quite inevitably, becoming
everyday more and more an affair of the central national authorities, of the
Governor or Council and the High Court of Tanganyika and of their
appointed deputies: the local Magistrates, the District Officers and the
Native Courts. But the process is not complete. In many situations of
social life the new imposed relationships with the great world are still
for the moment, more or less confused and so that the old primitive
conditions remain their power.

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693 by election; the election was made by the central power and the leaders
 622 of the local populations in agreement; mature wisdom, courtesy and
 557 generosity in the use of wealth were all essential qualifications for office.
 In arranging the succession to the local chieftains, on the other hand,
 the central power of Niganda took no active part. All these chiefs were
 related to the Ekyaga, who was informed of every "coming out" as a
 matter of form, but that was all. In the case of these local chiefs the
 hereditary principle was modified only by popular choice, acting
 gradually over a number of years.

(c) COMMON LAW.

● 682 We must beware of letting our civilized preconceptions blind us
 to the fact that, though some common law must be maintained in every
 society, it is not always necessary for it to be maintained by a central
 political authority. In the primitive world of Niganda Niganda played
 little or no direct part in the maintenance of common law; the great
 chiefs, the local chiefs, the territorial rulers, the great commoners of
 the village played a larger part; but even they usually left whole areas
 of law untouched to be enforced by the common people among them-
 selves. The laws of marriage for example, seem to have been normally
 enforced by the two families of each married couple concerned, with the
 advice and assistance of their neighbours.

In a primitive society a man is far more helplessly dependent upon
 his relatives, friends and neighbours than he is in our own. He cannot
 normally escape them, for his world is so small. And this fact enables
 them often to constrain him effectively without calling in the aid of any
 constituted political authority whatever. Moreover even when it is
 necessary to call in the aid of political authority it is often sufficient to
 call in those that have a local jurisdiction only. Customary judicial
 institutions, covering wide areas, are rare in primitive conditions,
 because widely extensive social relations are even rarer. The modern
 insistence upon the judicial functions of permanent chiefs in Africa is
 necessitated by the magnitude and complexity of the modern civilized
 world, in which law can only be maintained by central authorities; but,
 in every area at least, this insistence is something new. That many
 African permanent chiefs had some judicial functions in former times
 is, of course, a fact, but these functions were often less extensive than
 they are today.

In Niganda, however, there was traditionally no central court at all
 in which ordinary men could either bring cases direct or appeal from
 the decisions of their local authorities. In Niganda only cases of unusual
 and transgression against the Ekyaga or the great chiefs were dealt

with, and they were dealt with summarily. Each title of Ngunde, of course, decided such cases as the members of his own family bring him; but for Ngunde as a whole Mbande was not a court of law; it was a shrine, an assemblage, a focus of authority and a centre.

Each great chief, however, besides taking ordinary cases among the people of his own chiefdom, also held an appeal court of a kind to which cases could be brought from all the chiefdoms of his house; for the great chiefs alone among the sons of the Kyenge had power to administer the poison-ordeal (among); none of the territorial rulers had it also, but not the local chiefs. If any case proved difficult of decision, if either party was not satisfied that justice was being done, then appeal might be made to the among. And this brought a great chief something of the prestige of a high-court judge, for he could summon defendants from any chiefdom of his own house. And sometimes, as a guarantee of impartiality in a particularly difficult case, he might send the litigants to a neighbouring great chief, saying: "Let my brother settle this; otherwise they will say that I showed favour to one or the other and that I influenced the among!" Thus Mbande was said to have sent cases occasionally to Kalinga.

Now the poison-ordeal was not only appealed to in witchcraft cases, though it is with these that it is particularly associated, for without it they could never be decided at all; cases of any difficulty could be taken to it, whatever their nature. Nevertheless the procedure of the poison-ordeal was in itself a purely religious achievement; the legal argument was not required. An appeal to the among was an appeal beyond mortal justice altogether, to something that knew men's innermost thoughts and their most secret actions. It was believed that the among could be influenced, but only in religious ways. The impartiality of the great chief was important, for he could do and his attitude might be negatively conveyed into it; and it was also possible for its decision to be affected by magical preparations; but because it was left a wholly sacred.

And no case was ever taken on appeal to the great chiefs to be resolved in a secular way. Nor among any group of brother chiefs were cases ever taken on appeal from a junior to a senior. In the elaborate political hierarchy which we have described the element of secular judicial procedure was conspicuously slight. Indeed the sons of Ngunde had scarcely any greater judicial facilities than the Nyakusa, with their independent chiefdoms.

A great many cases, as we have pointed out, were decided by the common people among themselves, others were taken to the great commoners of the separate villages of each chiefdom, others to the

- 692 local chiefs themselves, sitting with their great-cousins, others to the territorial nobles. And this was often sufficient, when the two parties both belonged to the same chiefdom or the same *fa*. The judgments of these local authorities were effective, in the first place, because (and in so far as) they represented the common legal sense of their groups and the common determination not to allow these groups to be disrupted by litigation. They were effective, in the second place, because, under the primitive conditions of the old Ngondo, individuals were normally helplessly dependent upon these local groups.

694 When the parties belonged to different chiefdoms or *fa*s three kinds of legal procedure, other than the prison-ordeal, were open. It was possible, in the first place, "to institute an enquiry" (*shululungu*). The plaintiff went to ask the defendant's own chief (or noble) if he would please look into the matter for him; and sometimes satisfaction was obtained in this way. If it was not obtained then appeal could always be made to the *waga*.

And, in the second place, if both parties belonged to chiefdoms whose chiefs were closely related, then and only then the political hierarchy did provide a certain judicial assistance. "If one of the men of a junior chief had a case against one of the men of a senior, then the junior chief would go with some of his men to visit his elder brother. On arrival he would bid him not to be surprised at their coming, and explain that one of his men was a thief—"Is he indeed?"—"Yes"—"who is it?"—"He and so"—"You really mean it, he is a thief?"—"Certainly! Why else have we come?"—Then the senior chief would summon the man concerned and question him well, maybe, he would admit it. And then the senior chief, would send to take what had been stolen and would return it to his brother's subject."

And, again, if the men of two equally junior brother chiefs had a case against each other, the plaintiff's chief might accompany him when he went to institute an enquiry with the defendant's chief; and then both chiefs together would take the case to their elder brother for decision.

It is not certain to what genealogical distance this procedure was effective; our evidence suggests that it normally only obtained between chiefs who were half-brothers.

And, finally, it was possible to catch a hostage and so compel restitution for wrong done. "In the old days if one man had been wronged by another (of a different country) then he would catch and keep the child of some powerful man who lived in the same country as the wrongdoer. Then the father would send to enquire for what reason his child had been caught and would be told that it was because so and

so, one of his neighbours, had wronged and defrauded the apprehender. So the father would visit the wrongdoer and tell him that his own child had been caught because of him; and he would enquire into the case and the wrongdoer would pay what was due. After the payment had been made the child would be returned to its father unharmed, with its head shaven and bringing a gift." Now this, it must be emphasized, was not a violent but a truly legal procedure. It seems only to have been taken in clear cases when the debt was not seriously disputable or low, and all that was required was machinery to enforce its payment. It was a procedure generally accepted throughout Ngande and among the Nyakyusa; the father of the child seems not to have initiated it, and, being "a powerful man,"⁶⁹⁴ he was able to put pressure on his defaulting neighbour.

But these forms of procedure were insufficient to keep the peace in Ngande. In the Ngande plain at least, much the same law was common to all the feks and chiefdoms, but it was only enforced piecemeal in little local areas, or, beyond them, in occasional clear cases by the enquiry or the hostage method. And so quarrels, either between commoners or chiefs, led not infrequently to violence and war.

Now this situation requires to be explained. Why did the Kyrongo and his subordinates not develop an effective judicial system on the lines of the religious and economic hierarchy? I am not confident that our evidence supplies a certain answer, but there are two facts which, in combination, go some way towards doing so.

The crucial point is that, as we have already noticed, the conditions of life in Ngande in the middle period, did not commend the development of such a system. Most of life for most men was confined to the little local areas, within which law was effectively maintained. There it had to be maintained somehow, or life would have been impossible. But beyond them men had only occasional relationships. War was endemic in the society of Ngande but did not threaten to destroy it; and it is only that threat that can compel men to set up new machinery. The weakness of Ngande was sporadic only while fights were matters of an hour or two and casualties were slight.

Nevertheless there were other areas in primitive Africa in which paramount chiefs and their subordinates did maintain law and order with some success, and in which civil war, though it occurred, was treated as a crime. Why was this not done in Ngande? For, though centralized justice may not have been necessary, it would have had many obvious advantages. I believe that the answer to this question lies

⁶⁹⁴ i.e. a rich man with a certain local prestige and authority.

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in the religious confusion of the Kyranga. No Kyranga ever sat in public to judge his people until Mvukabanga, who reigned from 1894 to 1904. And if the advice of Ngondo, who acted for the Kyranga in most essential matters, only exercised judicial authority in matters immediately affecting his personal position, that was, I believe, because nothing more would have been tolerated by the chiefs. I cannot prove this point, for it only occurred to us after leaving Ngondo, but it seems probable that only under the presidency of the Kyranga himself could a central court have maintained itself; for the advice of Ngondo was not of royal blood. Comparative evidence supports this hypothesis, and the ease with which the present Kyranga maintains his central appeal court to-day makes it still more probable.

6. WARFARE. (MIDDLE PERIOD).

(a) CIVIL WAR.

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The endemic civil war of Ngondo appears rather to have resembled a series of rugby football matches without referees than the wholesale man-killing of modern Europe. "In the old days we used frequently to engage in little local fights. But always, when some occasion for war arose we used to send a message beforehand to tell the other side that we meant to fight them the next day at a certain time. And perhaps, if we had mentioned the morning, they would refuse and say they preferred the afternoon, and we would agree." (Was this always done?) "Yes, always; for if ever any group attacked suddenly and unexpectedly then everyone used to mock them for their cowardice and compare them with the Ngoni—for it was by unexpected night attacks that the Ngoni overcame us."

"And how did war start?" we asked. "Maybe a couple of boys would begin fighting, just with their fists, and as they fought another would come and join in to help his friend, then another on the other side,—until at last yet another would join in with a spear and wound someone. Then the wounded man would be taken home bleeding, and the next day there would be war!" (And what was the point of fighting such a war?) "So that the others should be ashamed and we on top. We used to fight from infancy onwards; we began as children by using mud-sticks, then we took to rocks and finally, as we grew up, to sharpened knives and spears." Such warfare seldom or never lasted for more than a single day. Cattle might be captured and humans taken, but there was no acquisition of territory.

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It was the territorial aim of the wars between the chiefs of Ndingu and of Ngondo which distinguished them from other civil wars; though

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in case of the groups they rule, they have fewer subjects to administer. But the "Sub-chiefs" and the "Important Headmen" cannot come to administer largely without losing much of their pre-eminent status.

The outbreak by Government of civil and tribal war, combined with the new economic and religious conditions, has enormously extended the normal range of social relationships among the people of Uganda; and a centralized judicial system has consequently been developed to deal with the new situation. The old forms of local autonomy have ceased.

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The continuity which is observable between the present constitution of Uganda and that of the middle period is mainly determined by three factors. In the first place the Government of the Protectorate deliberately supports in positions of high authority the legitimate successors of some of the old rulers. In the second place the judicial functions of these successors, which have been greatly extended, have replaced, to some extent, the old religious and military functions. And, in the third place, the present Uganda is, as it happens, a rich man. A decentralized monarchic dignity has been transformed into a centralized Native Authority with some continuity of personnel, with the addition of new functions for old and with the addition of a private fortune.

(4) FROM GOD TO MAGISTRATE.

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The first two of these factors of continuity—Government support and the increase of judicial functions—must be discussed together, for it is mainly because of their utility as subordinate magistrates that the Government supports the Native rulers of Uganda.

Modern conditions, in the sphere of law, bring about two great changes. Firstly the integration of the one-time primitive society of Uganda with the civilized world greatly increases the range of social relationships among its people, and so renders ineffective much of the traditional legal machinery. And, secondly, the introduction of Christianity, of political control by the British and of European economic enterprise radically changes the content of the law. Granted the general conditions of contact between Africans and Europeans in Central Africa a transformation of all its traditional legal systems is sure to be an inescapable necessity.

Common law must now be maintained by a hierarchy of legal authorities reaching far beyond the boundaries of Uganda, if it is to be maintained among its people at all. As I write these words in Livingstonia, a thousand miles by road from Uganda, there is a man of Uganda working in a shop within a hundred yards of my office. While in Uganda itself it is no longer true that a man's friends and neighbours, or even his immediate rulers, can ever be more of consequence than effectively if he

breaks a law; they must be able, if necessary, to call in the aid of some central authority or he will escape them. Many men today, for instance, take wives whose houses are fifty miles or more from their own; and such marriages cannot possibly be regulated by the old primitive procedures. Moreover the rapid and radical changes in the content of law which are necessitated by modern conditions could not be worked out in detail by a number of independent courts without much confusion. And so in the Ngunde of to-day common law is maintained both by a centralized police system and by two central appeal courts, a lower one provided over by the Kyranga, a higher one by the District Commissioner.

A dispute which took place in 1933 well illustrates both the necessity of a central appeal court in Ngunde and the support which the Kyranga now receives from the Administration. And it also shows that the old rivalry between the lines of Ngalanga and Ngunde still survives.

The Kyranga in his new judicial capacity decided a land-dispute between two local chiefs of the houses of "Sub-chief" Kilegula, who is now the most powerful, though not the senior, of the chiefs of Ngunde. The Kyranga's decision favoured that of Kilegula, who then became angry. The chief who lost the case is reported to have said: "How dare the Kyranga come here and divide up our land among us? He knows nothing about it." And Kilegula is reported to have taken much the same view; the new judicial functions of the Kyranga were resented by him. And Mwalongo, another great chief of Ngunde, sympathized with his resentment.

Then Kilegula and Mwalongo between them wrote a letter addressed to the Provincial Commissioner complaining of the Kyranga's conduct of this case. The District Commissioner, who received it first, called them in and advised them to burn it, but they insisted that it should be forwarded. But before this was done the Governor of Nyasaland arrived in Ngunde on tour and the two chiefs then asked that the letter should be handed to him. And so it was. Whereupon the Governor publicly reprimanded them for writing the letter and asked the Kyranga, before all the people, to decide how he would punish them, by fine or imprisonment. And the Kyranga fined them each £3.

No more striking expression could have been given of the Kyranga's present position as a trusted servant of the Government than this incident. While the fact that the dispute arose out of his new judicial functions and that it was two chiefs of Ngunde who stood against him is most illuminating. The Kyranga has exchanged the support of his ancestors for that of the Nyasaland Government, his dignity for a magisterial office. This change, on the whole, has been made easily enough, but a certain temporary friction was inevitable. The chiefs of Ngunde are the tradi-

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total rivals of those of Ngalenge; most of the traditional reasons which led them to accept the supremacy of a Kyungu of the house of Ngalenge, whenever one was elected, have now ceased to influence them; while they themselves, as we shall see in a moment, are now barred from the succession. Moreover the Kyungu's supremacy is now mainly operative in the restricted sphere of law. And as a new reason for admitting that supremacy has had to be more forcibly presented to them than to the other rulers of Ngondo.

Once forcibly presented, however, the new reason seems to have been admitted in place of the old ones without much difficulty. For in 1936, the next year, Kilapala spontaneously led his people to the Kyungu and formally handed over a cow to him, thereby re-establishing friendship and mutual respect between the two of them. The dispute has ended in a manifest harmony.²

It is relevant to mention here that in the first five months of 1937 only one case was taken on appeal from the Kyungu's court to that of the District Commissioner.

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The general status both of the great chiefs and of the local chiefs and nobles (the "Important" and "Village Headmen") as also of the great commoners, has been radically altered by the new legal conditions. Formerly these authorities were the mainstay of a primitive justice, but to-day they could not possibly enforce any legal decisions without the backing of the central Government. And this backing they do not have. Their sphere of influence is so small that it has not been thought worth while to give them any formal judicial authority; they are now mere arbitrators and all important cases go to court.

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The modern constitution of Ngondo is thus more centralized than the old. The support of the Government is given to, and effective judicial power is concentrated in the hands of half a dozen men, with their own advisers. The new judicial functions of the Kyungu and the selected "sub-chiefs" have, in fact, been transferred to them from the local rulers. Some such centralization was inevitable under modern conditions but the details are dependent upon the decisions of the Government.

(4) PETER THE FORTUNATE.

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The wealth of the present Kyungu is not only due to his great personal abilities. For twenty years before his appointment as Ragent (when he himself became the Kyungu in all but name) he was the fol-

¹ This phrase begs no questions about private feelings, upon which we have no evidence.

² This is less true of the great chiefs (the "Important Headmen") than of the nobles; and possibly an understanding of their status will alter the attitude of the Administration to them.

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674 all, hunting is organized like warfare and fishing is a joint endeavour, both ordered by the chief.

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Every chief has a title of ownership (*shower ndyir*) to the land of his chieftaindom and can evict any man he pleases, (giving him another plot), if he wishes to build there himself; but his people also have titles of ownership to it, both collectively, under the leadership of the great commoners, and individually, each man to his own ground. It is the great commoners who, in consultation with their neighbours, give to the sons of each village land on which to build; it is they who, together, finally fix the boundaries of the young men's villages at their "Coming Out"; it is they who, again in consultation with their neighbours, grant land to strangers who ask for it, though they must consult the chief and get his approval before doing so.

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As the single great commoners settle disputes within their own villages so the chief and great commoners together hear and decide cases within the chieftaindom. Many of these legal actions are now settled in the Courts, but not all of them; and, even when cases are going to Court, preliminary hearings commonly take place before the chief, first. Cases are conducted and witnesses interrogated by chief and great commoners together, and the decision which the chief pronounces is an expression of their general opinion.

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Among the great commoners there is an order of seniority. The leaders of the two senior age-villages of the chief's own men play a prominent part at his "Coming Out," they each have a pre-eminent authority in one side of his chieftaindom, and the other great commoners rank as their juniors, some on one side, some on the other. In the old days the two senior great commoners each led a whole side of the chieftaindom in war.

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The two most effective checks on the power of a chief are migration and *wincherah*. Military strength used to depend upon the number of a chief's adherents, to-day the scale of his salary is similarly dependent; men are quite free to move, and there is a constant flow of adherents from unpopular to popular chiefs. But unpopularity is most feared in its spiritual form of *wincherah*. We have seen already that an adverse current of opinion is believed to act invisibly, as the "breath of men," against an unpopular member of a village and to make him sick. So also the adverse opinion of a single village or of a whole chieftaindom is believed to have power against a chief, to bring sickness or even death upon him. As in the single village, so in the whole chieftaindom the great commoners are the prime sources of this spiritual power; they are believed generally to protect the members of their own villages and jointly to protect their

177 The office of chieftainship will carry high prestige and the
[643] District Council has actually resolved to select a permanent chief.
[644] Competition for this position is fierce and it remains to be seen
whether the Council will ever agree on a nomination. The
permanent suggestion that the Administration should undertake the
arduous task and select a permanent is scarcely likely to be acted
upon, since the Administration sees no economy for establishing
such an office.

Chiefs, advised by their village headmen, are the executive
officers of the Rural Councils, but they have lost their judicial
functions. There are twenty-four recognized courts with a bench
of "overlords" appointed annually by the Rural Councils, and
one superior court, but the annual appointments ceased in 1938 and
most permanent appointments were made. The aim is to develop
a specialized judiciary independent of the executive. There is
also a very important class of full-time civil servants, members
of the District and Rural Councils, and clerks of the courts.

622 The position of village headmen is in a fluid state. Where the
[644] "coming out" ritual has been dropped, the traditional occasion for
the formal appointment of village headmen no longer exists, and
old men continue in office much longer than before. When a
headman dies his heir sometimes takes his position or, if neither
the heir nor a junior son will accept it, some other man is ap-
pointed by the chief. There is evidence that in many chiefdoms
men are reluctant to undertake the position, which carries no
salary but involves a considerable amount of work and makes it
difficult or impossible for a man to engage in paid employment
either within or outside the District. As one woman put it, "Money
has killed the office of village headmen" (*Indilene ngilile chikwano*).
There is some evidence from the lake-chains plain, however, of
men competing for the office, and instead of a son claiming in the
courts the headmanship his father held. Possibly the competition
for land on the plain, and the fact that the allocation of land
lies with the village headmen, account for this. When all the
available land is taken up, it is probable that acquisition will be
623 through inheritance or sale only, and the present headman's
[644] power to allocate land is likely to vanish; but one of the most
important assets of a village is its pasture-land, and in controlling
and developing this the headman may well play a decisive part in
the future. Since village headmen are essential executive officers
in local administration, and are integrated into the new system of

villages grew ever smaller and became extinct as their members gradually died off in old age.

A West-rua village, then, ceased to being in the most significant political, social and religious sense. Each village had its own approximately democratic council, and each headman was elected and re-elected as long as he was able to lead and protect his men and their families.

This particular system operated satisfactorily in the demographic and land-using conditions of the old days. By the process of bifurcation, herds descended from one chiefdom and new villages were formed for each generation. Although the population appears to have been increasing rapidly there was always sufficient land to create new chiefdoms when one had reached failure, and to create new villages and more villages than had existed before in the old chiefdom. The two new chiefs were able easily to move apart and find sufficient and more than sufficient land for their needs.

The system of bifurcation, the ideal of the West-rua, did not always work out as easily in practice - at any rate it often did not in the Late Phase. Sometimes it did work; for example, the present chiefdoms of Lamara and Karonia are the two parts of their grandfather's single chiefdom, which split up under their respective fathers. Similarly, the present West-rua and West-rua-rua chiefdoms descended from a single unit, while the West-rua-rua chiefdom itself today is really two indigenous chiefdoms, but the Government would recognise only the senior brother's claim to chiefdom and allowed him authority over the whole. Even where a single new chiefdom succeeded the old (frequently as the result of civil war in which one brother slaughtered the other) the essential dichotomous arrangement persisted so that the resultant single unit had two distinct halves, each with its own land with its villages and headmen. In any case, whether traditional bifurcation occurred or not, and right down to modern times, new villages have been established at the time of the "coming-out" of the new chief. The basic village system showed greater persistence and remained true to type than did the chiefdom and the wider political system.

The real authority of a West-rua chief was not in general very great, although individuals here and there achieved personal importance. A chief was accorded a great deal of prestige and honour, and by tribute and gifts he frequently became pre-eminently wealthy. He was supposed to be kept informed by his headmen of all important village affairs and to approve all matters concerning the land, but the village headman was in fact the real local authority, who attended to the details of land allocation and land use within the village. A chief could not do this, and in fact only in so far as he had the support and loyalty of his headmen had he any authority at all. "A chief is a chief because he has headmen," one informant put it to me - he was a prominent chief himself. A village said: "A chief does not rule over the chiefdom, or the land. We, the people together, own it." A chief could, without notice or advice, take any unoccupied land for the use of himself or of his harem, but he could not allocate it to others; both headmen and villagers would have indignantly and successfully protested had he tried, or some occasionally did. Land disputes, or unimportant matters in a country where land was plentiful, were settled by the headmen of the village in question; they were the private affairs of the village and the chief had no right of interference. Some village disputes first came before a meeting of the headmen concerned, with perhaps the assistance of the senior headmen of the chiefdom. Only if a dispute could not be settled and if it seemed likely to threaten peace within the chiefdom would the disputants go before the chief himself, who even so acted not but to rely heavily on the headmen to secure a settlement. He followed was the position that he might be unable to resolve inter-village disputes for fear of ostracism or reprisals against him by the unsuccessful party.